IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.324 of 1993.

Decided on : November 29, 2007

State of H.P. **…Appellant.**

Versus

Birbal **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General.

For the Respondent : None.

Surjit Singh, Judge(Oral)

Respondent Birbal was charged with and tried for an offence punishable under Section 307 IPC, for allegedly making a murderous assault on PW-5 Ved Prakash, on 31st January, 1990. Trial Court acquitted him at the end of the trial. State has filed this appeal challenging respondent's acquittal.

2. We have heard the learned Additional Advocate General and gone through the record.

3. Allegations, on which the respondent was tried, may be summed up thus. On 31st January, 1990, PW-5 Ved Prakash, who is resident of village Barota, had gone to village Patyahu to see Subedar Amar Nath. In the evening, around 7.30, he started back. Since it had grown dark, Amar Nath provided him a torch. When he was still passing through village Patyahu, one Babu Ram met him and offered that since it had grown dark he could stay at his place for the night and go to his

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Whether reporters of the local papers may be allowed to see the judgment?

village next day. The two then proceeded towards the house of Babu Ram. When, on the way, Ved Prakash went to a water tank installed near the house of the respondent, with a view to drinking water, respondent is alleged to have hit him twice with an iron rod on the head, as a result of which he became unconscious. When PW-5 Ved Prakash did not reach home, search for him was started that very night. He could, however, be traced only the next day in the bushes near a field. He was taken to a nearby hospital, from where he was rushed to the PGI at Chandigarh. He remained admitted in the PGI upto 11th February, 1990, where he was operated upon for the head injury. Injury was opined to be dangerous to life.

4. Matter was reported to the police on 1st February, 1990 by one of the brothers of PW-5 Ved Prakash, namely Bam Dev. In the report, it was stated that it appeared that some enemy of Ved Prakash had hit him on the head and thrown him in the bushes, presuming him to be dead. On 6th March, 1990, statement of PW-5 Ved Prakash was recorded by the police and it was then that the police came to know that it was the respondent who had dealt blows on the head of said Ved Prakash, by means of an iron rod.

5. Respondent denied, in his statement, under Section 313 of the Code of Criminal Procedure, that he had caused the injuries to PW-5 Ved Prakash, as alleged by the latter. He pleaded that as a matter of fact around 10 in the night, when he was asleep, he heard the shouts of his sister DW-1 Kamla and that when he switched on the light he saw PW-5 Ved Prakash in the verandah of his house and then he grappled with him and in the course of that grappling PW-5 Ved Prakash ran away. He denied having dealt any blow on the head of Ved Prakash.

6. According to the prosecution version, Babu Ram was accompanying PW-5 Ved Prakash at the time when the alleged incident

took place. Prosecution did not examine said Babu Ram nor did it offer any plausible explanation for withholding him. PW-5 Ved Prakash made the statement to the police, on 6th March, 1990, naming the respondent as accused, even though he regained consciousness on 5th February, 1990, as per testimony of PW-8 Dr. R.C. Thakur, who conducted the operation of PW-5 Ved Prakash for the injuries on 4th February, 1990 at PGI, Chandigarh. Prosecution has not offered any explanation for the long delay in recording the statement of PW-5 Ved Prakash. A suggestion was thrown to PW-5 Ved Prakash, when he was in the witness-box, that he had cooked up a false story against the respondent, because a complaint had been lodged against him by DW-1 Kamla, the sister of the respondent, alleging that he had entered her house and tried to outrage her modesty. PW-5 Ved Prakash denied the suggestion and explained that the complaint was lodged against him by DW-1 Kamla Devi, 32 days after the occurrence, when the respondent came to know that he was alive and his (PW-5 Ved Prakash's) statement could put him behind the bars. One thing is clear from this explanation of PW-5 Ved Prakash that there was an allegation of assault with an intent to outrage the modesty of the sister of the respondent. It was after the lodging of the complaint by the sister of the respondent that PW-5 Ved Prakash made a statement, dated 6th March, 1990, to the police naming the respondent as the person responsible for inflicting the injuries on his head.

7. It has come in the evidence that *Chappals* of PW-5 Ved Prakash were produced to the police by the respondent. Even though the prosecution version is that these *Chappals* were picked up by the respondent from the field and then given to the police, PW-13 Krishan Chand stated that a pair of *Chappals* was recovered from the house of the respondent. DW-1 Kamla Devi, the sister of the respondent, stated that PW-5 Ved Prakash left the pair of *Chappals* at their place and that they

produced the same to the police at the time when she lodged the complaint with the police that the respondent had assaulted her with intent of outraging her modesty.

8. In view of the abovestated position, we do not think the view taken by the trial Court is not reasonably possible from the evidence on record. Hence, the appeal is dismissed.

(Surjit Singh), J

November 29, 2007(sd) **(Surinder Singh), J**